

CONFORMED COPY

CREDIT NUMBER 3576 NIR

Development Credit Agreement

(Public Expenditure Adjustment Credit)

between

REPUBLIC OF NIGER

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 21, 2001

CREDIT NUMBER 3576 NIR

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated November 21, 2001, between Republic of NIGER (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Borrower a letter, dated September 14, 2001, describing a program of actions, objectives and policies designed to achieve sustainable fiscal and budgetary management (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof, and

(B) on the basis, inter alia, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Borrower by making the Credit in two tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, (as amended through October 6, 1999) with the modifications thereof set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) A new paragraph (12) is added to Section 2.01 to read as set forth below, and the existing paragraphs (12) through (14) of said Section are accordingly renumbered as paragraphs (13) through (15):

"12. 'Participating Country' means any country that the Association determines meets the requirements set forth in Section 11 of Resolution No. 194 of the Board of Governors of the Association, adopted on April 8, 1999; and 'Participating Countries' means, collectively, all such countries.";

(b) Section 2.01, paragraph 13, as renumbered, is modified to read:

"Project" means the Program, referred to in the Preamble to the Development Credit Agreement, in support of which the Credit is made.";

(c) Section 4.01 is modified to read:

“Except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the deposit account specified in Section 2.02 of the Development Credit Agreement.”;

(d) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in accordance with the provisions of the Development Credit Agreement and of these General Conditions”;

(e) The last sentence of Section 5.03 is deleted;

(f) Section 9.06 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the Program referred to in the Preamble to the Development Credit Agreement, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit.”; and

(g) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “CFA Franc” means “*Franc de la Communauté Financière Africaine*”, the currency of the Borrower;

(b) “*Chambre des Comptes*” means the Borrower’s Supreme Court specialized Division charged with the auditing of the Borrower’s budget;

(c) “Domestic Arrears Reduction Plan” means the plan established by the Borrower, dated September 14, 2001, which describes the Government’s quantitative objectives and priorities for the settlement of domestic arrears, as well as settlement modalities;

(d) “Deposit Account” means the account referred to in Section 2.02 (b) of this Agreement;

(e) “Fiscal Year” means the Borrower’s fiscal year, beginning January 1 and ending December 31;

(f) “First Tranche” means the tranche referred to in Category (1) of the table in paragraph 1, of Schedule 1, to this Agreement, to be released by the Association on or after the Effective Date;

(g) “ENI” means *Ecole Normale d’Instituteurs*, the Borrower’s four public institutions for training of primary school teachers, and established pursuant respectively to decree No. 70-256/MEN of November 28, 1970, decree No. 79-71/PCMS/MEN of April 26, 1979, and decree No. 73-117/PRN/MEN/JS of October 5, 1973.

(h) “*Loi de finances*” means the annual budget law of the Borrower, as approved by the National Assembly every year.

(i) “*Loi de régleme*nt” means a law passed by the Borrower’s National Assembly every year which reviews the execution of the budget law (*loi de finances*) for the preceding fiscal year; and

(j) “Second Tranche” means the tranche referred to in Category (2) of the table in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the date on which the conditions referred to in Section 2.02 (d) of this Agreement have been met.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to fifty-four million five hundred thousand Special Drawing Rights (SDR 54,500,00).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain at Banque Centrale des Etats de l’Afrique de l’Ouest (BCEAO), a deposit account in CFA Francs on terms and conditions satisfactory to the Association. All withdrawals from the Credit Account shall be deposited by the Association into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association, (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

(d) No withdrawals shall be made from the Credit Account after the aggregate of the proceeds of the Credit withdrawn from the Credit Account shall have reached the equivalent of SDR 23,400,000, unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (A) with the progress achieved by the Borrower in the carrying out of the Program;
- (B) that the actions set forth in Schedule 2 to this Agreement have been undertaken;
- (C) that the Borrower's macroeconomic policy framework is consistent with the objectives of the Program, and

if, after said exchange of views, the Association shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Association, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

Section 2.03. The Closing Date shall be June 30, 2003, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on June 1 and December 1 of each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each June 1 and December 1, commencing December 1, 2011 and ending June 1, 2041. Each installment to and including the installment payable on June 1, 2021 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by the Association of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the French Republic is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Association on any proposed action to be taken after the

disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program.

Section 3.02. Upon the Association's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as available, but in any case not later than six months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Termination

Section 5.01. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of the Borrower responsible for finance is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministre des Finances
Ministère des Finances, des Réformes Economiques et de la Privatisation
B.P. 862
Niamey, NIGER

Telex: 2559 MJ

Facsimile:

For the Association:

International Development Association
1818 H Street, NW
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INDEVAS
Washington, D.C.

248423 (MCI) or
64145 (MCI)

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF NIGER

By

By: /s/ Joseph Diatta
Authorized Representative

INTERNATIONAL

DEVELOPMENT

ASSOCIATION

By

/s/ Theodore Ahlers
Acting Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

	<u>Tranche</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1)	First Tranche	23,400,000	100% of foreign expenditures
(2)	Second Tranche	31,100,000	100% of foreign expenditures
	TOTAL	<u>54,500,000</u> =====	

2. For the purposes of this Schedule the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, and for purposes of Section 2.02 (c) of this Agreement, the proceeds of the Credit shall not be used to finance any of the following expenditures:

(a) expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(b) expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another credit or a loan;

(c) expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmith's or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

(d) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

(e) expenditures for environmentally hazardous goods (for purposes of this paragraph the term “environmentally hazardous goods” means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

(f) expenditures (i) in the territories of any country which is not a Participatory Country or for goods procured in, or services supplied from, such territories or (ii) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

(g) expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.

SCHEDULE 2

Actions Referred to in Section 2. 02 (d) of this Agreement

The Borrower has:

- I. *Pertaining to fiscal stability and budgetary outcomes for 2001*
 - a) Implemented by December 31, 2001 the Domestic Arrears Reduction Plan according to the quantified reduction targets and settlement modalities set forth in said plan and avoided the accumulation of new arrears in FY 2001.
 - b) Closed budgetary accounts for FY 2001 pursuant to prevailing legislation, and furnished to the Association a final consolidated balance sheet of the Borrower's treasury (*Balance Générale du Trésor*) for FY 2001;
- II. *Pertaining to budgetary preparation and execution reform*
 - c) Adopted by *Arrêté* new budget and accounting nomenclatures, in form and substance acceptable to the Association, for the preparation and execution of the 2003 *Loi de finances*;
 - d) Furnished to the Association evidence in form and substance satisfactory to the Association of the submission of a procurement code, in form and substance acceptable to the Association, to the Borrower's national assembly;
 - e) Furnished to the Association the draft audit report for FY 1997 of the specialized Division of the Borrower's *Chambre des Comptes* of the Borrower's Supreme Court.
- III. *Pertaining to content and initial execution of the 2002 loi de finances*
 - f) Provided for allocations in the approved 2002 *loi de finances* pursuant to paragraphs 59 through 64 of the Program;
 - g) Executed the budget for the first quarter of FY 2002, in particular for the items listed in paragraphs 59 through 64 of the Program, as evidenced by a joint report from the Ministries of Finance, National Education and Public Health.
- IV. *Pertaining to social sector reforms*
 - h) Furnished to the Association evidence, in form and substance acceptable to the Association, of revised statutes and work programs of ENI, and of the adoption of a teachers' recruitment policy institutionalizing exclusively contractual recruitment for teaching positions in primary schools.

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